ATTORNEY FOR APPELLANT:

LISA A. MOODY
Princeton, Indiana

ATTORNEY FOR APPELLEE:

DAN L. REEVES
Princeton, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DEBORAH L. HACK,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 26A01-0706-CV-281
	)	
MAXINE L. DOYLE,	)	
	)	
Appellee.	)	

APPEAL FROM THE GIBSON SUPERIOR COURT
The Honorable Earl G. Penrod, Judge
Cause No. 26D01-0703-SC-121

March 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Deborah L. Hack appeals the trial court's order, which granted Maxine L. Doyle's claim for eviction against Hack and denied Hack's motion to dismiss. Hack presents the following consolidated and restated issue for review: Did the trial court err when it determined that the parties' Lease and Purchase Agreement was a rental agreement?

We affirm.

In July 2002, Doyle built a house on land that she leased from the Fish and Wildlife Conservation Club. On November 14, 2002, Doyle entered into a "Lease and Purchase Agreement" (Agreement) with her daughter, Hack. *Appellant's Appendix Volume II* at 8.[1] The Agreement called for Doyle, as "LESSOR", to "lease" the house to Hack, as "LESSEE" for a term of twenty years with a "monthly rental" fee of $500.00. *Id.* The Agreement also provided that Hack would "perform general maintenance to the building and grounds at her expense during the term" of the lease and would pay all taxes, assessments, and insurance premiums on the dwelling. *Id.* Under the terms of the Agreement, Hack could not assign, sublease, or make changes to the premises without written consent from Doyle, and Hack agreed to permit Doyle or her employees to enter the premises at reasonable times for maintenance and repair purposes. At the termination of the lease, Hack "agree[d] to surrender . . . possession" of the premises. *Id.* Article 3 of the Agreement provided that Hack was "granted the option to purchase the Leased premises for the cash sum" of $120,000.00 and that "[a]ll rental payments made" by

[1] Hack's Appellant's Appendix consisted of two volumes, but each volume was separately paginated. We direct Hack's attention to Ind. Appellate Rule 51(C), which provides that "[a]ll pages of the Appendix shall be numbered at the bottom consecutively . . . regardless of the number of volumes the Appendix requires."

Hack would be applied toward the purchase price. *Id.* The Agreement also provided that if Hack should "default in the payment of the rent or in the due performance of any of the other conditions or covenants contained in th[e] lease[,]" then Doyle would "have the right . . . to terminate the term of th[e] lease and re-enter the demised premises and repossess and enjoy the same." *Id.* at 9. Upon such a default, the Agreement provided that Doyle would give Hack thirty days to remedy any default.

Doyle paid the property taxes, insurance, and other maintenance costs associated with the house and then sent Hack a yearly statement for what was owed. Hack made payments to Doyle by having approximately $250 to $300 withheld from her bi-weekly paycheck and directly deposited into Doyle's bank account. Hack's deposits to Doyle's account covered the monthly rental payments but did not fully cover the rest of the expenses Hack was required to pay under the Agreement.

In January 2007, Doyle sent Hack a letter notifying Hack that she had "not complied with terms of the lease agreement[,]" because she had "over $4,000.00 in lease delinquencies" for "taxes, assessments, insurance[,] and property maintenance" paid by Doyle and not reimbursed by Hack and because she failed to perform general maintenance, such as staining the garage and deck. *Id.* at 12. In the letter, Doyle informed Hack that if she would "timely vacate the property," then Doyle would "call the account even and not press the matter further." *Id.* Hack did not pay the delinquencies and did not vacate the premises within thirty days of Doyle's notice.

On February 20, 2007, Doyle sent Hack a letter informing her that Doyle was terminating the right of tenancy and instructing Hack to vacate the premises by March 1,

2007, or else Doyle would initiate legal proceedings. Hack did not vacate the premises but sent Doyle a check for $4,963.16 to cover the delinquent costs. Doyle did not accept the payment and sent the check back to Hack.

On March 2, 2007, Doyle filed a small claims Notice of Claim for eviction, asserting that Hack had defaulted on the rental agreement. Hack filed a motion to dismiss the eviction claim, arguing that a mortgage foreclosure—and not a small claims action for eviction—was the proper action against her because the Agreement was a purchase agreement and not a rental agreement. Hack based her argument on the fact that the Agreement gave her an option to purchase and she had paid lease payments that could be applied toward the purchase price.

On April 13, 2007, the trial court held a hearing on Doyle's claim for eviction and Hack's motion to dismiss. During the hearing, Doyle indicated that she was not seeking the more than $4,000 in deficient payments but that she was seeking instead to have Hack vacate the property so that Doyle could re-enter and repossess the property. The trial court issued a Judgment Order, which denied Hack's motion to dismiss, granted Doyle's claim for eviction, and ordered Hack to vacate the premises within thirty days. The trial court's Order provides, in part:

> The Court finds that the document in question is a rental agreement and amounts paid by [Hack] were monthly rental. Although the lease is entitled "Lease and Purchase Agreement" the lease was not considered by the parties nor can it now be construed to be a contract for the sale of real estate, necessitating a consideration of whether there would be a forfeiture of the contract in lieu of a foreclosure procedure.

Id. at 3. Hack now appeals.

Hack argues the trial court erred when it determined that the parties' Lease and Purchase Agreement was a rental agreement. Because this case was tried before the bench in small claims court, we review for clear error. *Lowery v. Housing Auth. of City of Terre Haute*, 826 N.E.2d 685 (Ind. Ct. App. 2005). We will affirm a judgment in favor of a party having the burden of proof if the evidence was such that a reasonable trier of fact could conclude that the elements of the claim were established by a preponderance of the evidence. *Id.* We presume that the trial court correctly applied the law and give due regard to the trial court's opportunity to judge the credibility of the witnesses. *Id.* We will not reweigh the evidence, and we will only consider the evidence and reasonable inferences therefrom that support the trial court's judgment. *Id.*

The issue presented involves the interpretation of the parties' Lease and Purchase Agreement. The construction of the terms of a written contract is a pure question of law, and we review such questions de novo. *Whitaker v. Brunner*, 814 N.E.2d 288 (Ind. Ct. App. 2004), *trans. denied*. Our primary task when interpreting the meaning of a contract is to determine and effectuate the intent of the parties. *Id.* We must first determine whether the language of the contract is ambiguous. *Id.* "The unambiguous language of a contract is conclusive upon the parties to the contract and upon the courts." *Id.* at 294 (citation omitted). If the language of the contract is unambiguous, the parties' intent will be determined from the four corners of the contract. *Whitaker v. Brunner*, 814 N.E.2d 288. Conversely, if a contract is ambiguous, its meaning must be determined by examining extrinsic evidence and its construction is a matter for the fact-finder. *Id.* When interpreting a written contract, we attempt to determine the intent of the parties at

the time the contract was made by examining the language used in the instrument to express their rights and duties. *Id.* We read the contract as a whole and attempt to construe the contractual language so as not to render any words, phrases, or terms ineffective or meaningless. *Id.* We must accept an interpretation of the contract that harmonizes its provisions rather than one that places its provisions in conflict. *Id.*

Hack argues the trial court erroneously determined that the parties' Agreement was a rental agreement because the language of the Agreement—specifically, the inclusion of the "option to purchase" language in Article 3—shows that the Agreement was a purchase agreement, thus giving her a right in the property. *See Appellant's Appendix Volume II* at 8. Doyle contends that the Agreement was, as the trial court found it to be, a rental agreement or lease and that the option to purchase language included in the Agreement did not nullify the lease and convert it into a land sale contract. In support of her argument, Doyle cites to *Bernstein v. Rhoades*, 92 Ind. App. 553, 157 N.E. 463 (1927), *Hunter v. Smith*, 92 Ind. App. 609, 172 N.E. 926 (1930), and *Tyler v. Tyler*, 111 Ind. App. 607, 40 N.E.2d 983 (1942).

In *Bernstein*, the parties signed an agreement to lease real estate. *Bernstein v. Rhoades*, 157 N.E. 463. The terms of the agreement provided, among other things, that the lessee would make a monthly payment for a specified term; use the premises for dwelling purposes; pay some of the insurance premiums; and would not sublet or make alterations to the premises without consent of the lessor. *Id.* The agreement also contained a provision giving the lessee an option to purchase the real estate and, upon exercise of the option, crediting any monthly payments toward the purchase price. *Id.*

On appeal, the lessee argued that the contract between the parties was an agreement to sell the real estate and not a lease. *Id.* We disagreed and held that the contract was a lease with an option to purchase. *Id.*

In *Hunter*, the parties had the same form of lease as in *Bernstein*. *Hunter v. Smith*, 172 N.E. 926. We held that, under the disputed contract, a landlord-tenant relationship existed and explained that

> [a] contract, which contains all the essentials of a lease, and also a provision for the purchase and sale of the land by the lessee upon compliance with its provisions, does not destroy the lease and prevent the existence of the relationship of landlord and tenant, although the payments made as rent are to be credited upon the purchase price if the option is exercised.

Id. at 926-27. In *Tyler*, we further elaborated on the effect of the inclusion of an option to purchase in a lease and stated that

> an option to purchase gives no right of property in and to the thing which is the subject of the option. It is not a sale. It is not even an agreement for a sale. At most, it is but a right of election in the party receiving the same to exercise a privilege, and only when that privilege has been exercised by an acceptance does it become a contract to sell.

Tyler v. Tyler, 40 N.E.2d at 985-86 (citation and internal quotes omitted).

Looking at the four corners of the Agreement between Doyle and Hack, we agree with the trial court that the Agreement is a lease or rental agreement and not a contract for the sale of real estate. The inclusion of the option to purchase in the Agreement did not give Hack a right in the property but merely granted her the right—upon cash payment of $120,000 minus credit for any rental payments already made—to "purchase

the Leased premises[.]" *Appellant's Appendix Volume II* at 8. Accordingly, we conclude the trial court did not err when it determined that the Agreement was a rental agreement.[2]

Judgment affirmed.

MATHIAS, J., and ROBB, J., concur.

[2] Because we conclude that the Agreement was a lease and not a purchase agreement or land sales contract, we need not address Hack's argument that foreclosure, and not forfeiture, was the appropriate remedy for her breach of the land sales contract.